

**ORDINANCE NUMBER 05 OF 2024**

**AN ORDINANCE PROVIDING FOR GREATER CONTROL AND MORE EFFECTIVE REGULATIONS REGARDING FIREWORKS WITHIN SALEM TOWNSHIP, LUZERNE COUNTY, PENNSYLVANIA**

**WHEREAS**, Salem Township, Luzerne County, is a political subdivision of the Commonwealth of Pennsylvania which is entitled to the rights, privileges, and immunities conferred under the Second-Class Township Code (53 P.S. §65101 et seq.), as amended; and

**WHEREAS**, the Township Board of Supervisors recognizes that noise disturbance(s) can be a serious threat to the comfort, convenience, health, safety, welfare and overall quality of life of the citizens of the Township; and,

**WHEREAS**, the Township Board of Supervisors desire to adopt an Ordinance to establish requirements and criteria to prevent noise disturbance(s) that may jeopardize the health and welfare of its citizens or degrade their quality of life.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED**, by the Board of Supervisors of Salem Township, Luzerne County, Pennsylvania:

**SECTION 1. TITLE**

This Ordinance shall be known as the Salem Township “Fireworks Control Ordinance”.

**SECTION 2. PURPOSE, INTENT AND AUTHORITY**

Noise disturbance(s) can be a serious threat to the comfort, convenience, health, safety, welfare, and overall quality of life of the citizens of Salem Township. It is the intent of this Ordinance to establish requirements and criteria to prevent noise disturbance(s) that may jeopardize the health and welfare of its citizens or degrade their quality of life. Therefore, it intends hereby to establish regulations and permitting requirements subject to its police power in order to preserve, protect, and promote health, safety, welfare,

and peace, quiet, comfort and safety to the residents, visitors and traveling public within Salem Township limits. This ordinance is enacted pursuant to the general powers of the Board of Supervisors, contained in the Second Class Township Code, 53 P.S. §66506, and associated enforcement provisions related to health, public safety, and noise at 53 P.S. §66601(c.1).

### SECTION 3. DEFINITIONS

**APA 87-1** - The American Pyrotechnics Association Standard 87-1. Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, 2001 edition, or any subsequent edition.

**BUILDING** - Any structure used by humans or animals for occupancy or storage and related activities including but not limited to houses, garages, sheds, barns, pole buildings, equipment sheds, etc.

**CONSUMER FIREWORKS** - Any combustible or explosive composition or any substance or combination of substances, which is intended to produce visible or audible effects by combustion, is suitable for use by the public, complies with the construction, performance, composition, and labeling requirements promulgated by the Consumer Products Safety Commission in 16 CFR (Code of Federal Regulations) (relating to commercial practices) or any successor regulation, and complies with the provisions for "consumer fireworks" as defined in American Pyrotechnics Association ("APA") Standard 87-1 or any successor standard, the sale, possession, and use of which is permitted throughout the Commonwealth of Pennsylvania.

The term "Consumer Firework" shall not include devices such as "ground and handheld sparkling devices", "novelties", or "toy caps" as defined in APA Standard 87-1 or any successor standard, the sale, possession, and use of which shall be allowed. The term "Consumer Fireworks" shall further not include explosives which are illegal under federal law, such devices described in 49 CFR 173.53 (relating to forbidden explosives) or those devices that have not been tested, approved and labeled by the United States Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80", "M-100", "blockbuster", "cherry bomb", or "quarter or half stick" explosive devices.

**DISPLAY FIREWORKS** - Large fireworks to be used solely by professional pyro technicians and designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, the following:

1. Salutes (fireworks designed to produce an explosive sound as its primary effect) that contain more than two grains or 130 milligrams of explosive materials;
2. Aerial shells containing more than 60 grams of pyrotechnic compositions;
3. Other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as fireworks UN0333,

UN0334, or UN0335 under 49 CFR 172.101 (relating to purpose and use of hazardous materials table).

The term "Display Fireworks" shall not include explosives which are illegal under federal law, such as devices described in 49 CFR 173.53 (relating to forbidden explosives) or those devices that have not been tested, approved and labeled by the United States Department of Transportation, including, but not limited to, those devices commonly referred to as "M-80", "M-100", "blockbuster", "cherry bomb", or "quarter or half stick" explosive devices.

**IMPULSIVE SOUND** - A sound of short duration, usually less than one second, with an abrupt onset and rapid decay.

**NOISE DISTURBANCE** - Any sound that annoys or disturbs a reasonable person with normal sensitivities, and/or endangers or injures the safety or health of humans or animals.

**PERSON** - An individual, or any association, partnership, corporation, company, sole proprietorship, or owner of any business entity, including any officer, employee, workman or agent thereof.

**REAL PROPERTY BOUNDARY** - An imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.

#### SECTION 4. PROHIBITED ACTS

##### A. Noise Disturbance Prohibited

No person shall make, continue, or cause to be made or continued, any noise disturbance from or at any property that is subject to such person's right to control. The following acts, and the causing thereof, are declared to be noise disturbances and therefore in violation of this Ordinance;

##### 1. Consumer Fireworks

a. The owner, possessor, lessee or responsible agent of the real property on which fireworks are being ignited for the sole purpose of this ordinance will be the legally responsible party for any violations for which the offending party is not known.

b. Prohibited Acts:

- (i) A person who is under the age of eighteen (18) years of age may not purchase, possess and or use consumer and/or display fireworks within the Township.
- (ii) The use or firing of consumer fireworks which create an impulsive sound so as to cause a noise disturbance cannot be ignited or discharged within the Township on days other than the following holidays: New Year's Eve, New Year's Day, Memorial Day(weekend), the week of July 4<sup>th</sup>, Labor Day(weekend) and Patriots Day. On New Year's Eve, consumer fireworks may be used between the hours of 4 p.m. and 1 a.m., and on all other holiday(s) between the hours of 4 p.m. and 11 p.m.
- (iii) Any consumer firework on day(s) other than stated above must have approval by the Salem Township Police Department.
- (iv) No firework can be ignited or discharged on public or private property without the express permission of the property owner.
- (v) No firework can be discharged from or within a motor vehicle or building.
- (vi) No firework can be discharged toward a motor vehicle or building.
- (vii) No firework can be discharged within 150 feet of a structure, whether or not a person is actually present.
- (viii) No firework can be discharged while the person is under the influence of alcohol, a controlled substance, or a drug.
- (ix) No use of consumer firework(s) is permitted on Township property.

## 2. Display Fireworks

Every use of Display Fireworks within the Township shall be performed by a competent individual and shall be of such character and so located, discharged, fired or activated in such a manner so as not to be hazardous to property or endanger person or persons. Applicant for use of Display Fireworks shall arrange with the Fire Department having jurisdiction to have them present at the display or use and deployed in such a manner as to prevent injury to persons or damage

to property. No Display Fireworks shall be ignited within 300 feet of a facility that meets the requirements of 72 P.S. §2407 and 2410 (Sales locations and temporary sale locations for fireworks).

A. Permit Required

(1). A permit shall be required for the use of Display Fireworks through the Salem Township Code Enforcement Officer. Issuance of such permit is subject to the following restrictions and conditions:

- a. Any use of Display Fireworks pursuant to a permit shall be in accordance with all applicable laws and regulations;
- b. Any use of Display Fireworks pursuant to a permit shall not occur between the hours of 01:00 a.m. and 6:00 a.m.;
- c. The Township has the discretion to deny or suspend a permit for Display Fireworks if the Fire Chief deems denial or suspension to be in the best interests of the Township or its residents, including, but not limited to, where circumstances of adverse weather conditions exist or are forecasted, such as drought or high winds;
- d. Applications for permits must be submitted at least 14 days in advance of the proposed use of Display Fireworks;
- e. Applications for permits must include written approval of the owner of the property from which the Display Fireworks shall be used.

2. The Township shall require payment of a permit fee at the time of application for such permit, in an amount established from time to time by resolution of the Township.

3. The permitting requirements of this section shall not be applicable to the following activities involving the use of fireworks or similar devices as defined herein:

- a. When the use is authorized from an agency of the state or federal government;
- b. When used as authorized for agricultural purposes in connection with the raising of crops and the protection of crops from bird and animal damage;
- c. When used in quarrying or for blasting or other industrial use;

- d. Use of blank cartridges for show or theatrical production or for signal or ceremonial purposes in athletics or sports;
- e. Use by military organizations composed of veterans of the United States Armed Forces;
- f. Use by law enforcement during an official incident or for official training purposes.

**B. Bond and Insurance Required**

1. After paying the appropriate permit fee and obtaining a Township permit to use Display Fireworks, the permit holder shall post with the Township a bond of not less than \$1,000,000 intended to cover any personal injury and property damage caused by reason of the use of such Display Fireworks and arising from an act of the permit holder or an agent, employee, or subcontractor of the permit holder.
2. The permit holder shall also furnish General Public Liability Insurance "all risk" type in an amount of not less than \$1,000,000.00 naming the Township and any Fire Company onsite or responding to any calls as additional insureds. Proof of Insurance shall be timely provided to the Township.

**SECTION 5. ENFORCEMENT**

- A. Any person committing any of the prohibited acts shall be in violation of this ordinance and be subject to the penalties set forth below.
- B. Any noise from the aforesaid prohibited act(s) that disturbs one resident who resides across a real property boundary from the property on which the source of the noise is generated, or when such noise disturbance is corroborated by a Police Officer and/or a single complainant shall constitute a noise disturbance across a real property boundary.
- C. Nothing in this ordinance shall be construed to impair any cause of action or legal remedy of any person for injury or damage arising from any violation of this ordinance.
- D. This Ordinance shall be enforced by the Salem Township Police Department and/or Salem Township Code Enforcement Officer.

## **SECTION 6. PENALTIES**

- A. If upon conviction of any provision of this ordinance, the violator and/or property owner may be sentenced to pay a fine of not more than \$50.00 for the first offense, \$100.00 for the second offense, and \$1,000.00 for the third and subsequent offense(s), and may be imprisoned no more than ninety (90) days, or both.
- B. For ongoing violations, each day during which a violation occurs shall be considered a separate violation subject to separate penalties.

## **SECTION 7. SEVERABILITY**

If any sentence, clause, section, term, phrase or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, terms, or parts of this Ordinance. It is hereby declared the intent of the Board of Supervisors of Salem Township that this Ordinance would have been adopted had such an unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included.

## **SECTION 8. FAILURE TO ENFORCE NOT A WAIVER**

The failure of the Township, or any of its' agents, to enforce any provision of this Ordinance shall not constitute a waiver by the Township, or its' agents, of its rights of future enforcement hereunder.

## **SECTION 9. REPEALER**

Any ordinance, resolution and/or other regulation of the Township, or any parts of ordinances, resolutions and/or other regulations of the Township, including but not limited to all prior zoning ordinances and amendments or parts of prior zoning ordinances and amendments, including prior zoning maps, which are inconsistent herewith are hereby repealed. All other provisions of the ordinances, resolutions and/or other regulations of the Township of Salem, Luzerne County, Pennsylvania shall remain in full force and effect.

SECTION 10. EFFECTIVE DATE

This Ordinance shall be effective five (5) days following its legal enactment.

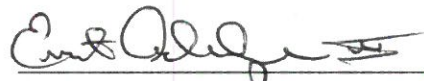
ORDAINED and ENACTED as an Ordinance by the Board of Supervisors of Salem Township, Luzerne County, Pennsylvania, in lawful session duly assembled, this 13<sup>th</sup> day of August, 2024.

ATTEST:

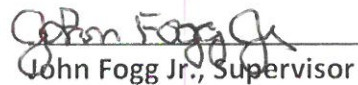


  
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Amy Evans, Secretary

BOARD OF SUPERVISORS  
SALEM TOWNSHIP:

  
\_\_\_\_\_  
Ernest Ashbridge III, Chairman

  
\_\_\_\_\_  
Richard Talanca, Supervisor

  
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John Fogg Jr., Supervisor